

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

RAY ALLEN ARBOGAST,

Plaintiff,

v.

**2:04 CV 97
(Maxwell)**

**POCAHONTAS COUNTY SHERIFF
DEPARTMENT,**

Defendant.

ORDER

It will be recalled that on December 30, 2004, *pro se* Plaintiff Ray Allen Arbogast, an inmate at the Potomac Highlands Regional Jail at Augusta, West Virginia, filed a Complaint against the Pocahontas County Sheriff Department.

It will further be recalled that the case was referred to United States Magistrate Judge John S. Kaull in accordance with Standing Order of Reference for Prisoner Litigation Filed Pursuant to 42 U.S.C. § 1983 (Standing Order No. 3).

After conducting an initial screening and review, United States Magistrate Judge John S. Kaull issued a Report And Recommendation on January 24, 2005, wherein he recommended that the Plaintiff's Complaint be dismissed with prejudice pursuant to 28 U.S.C. §§ 1915 and 1915A, for being frivolous.

In his Report And Recommendation, Magistrate Judge Kaull provided Mr. Arbogast with ten (10) days from the date of said Report And Recommendation in which to file objections thereto and advised Mr. Arbogast that a failure to timely file objections would result in the waiver of his right to appeal from a judgment of this Court based

upon said Report And Recommendation.

The Court's review of the docket in the above-styled action has revealed that no objections to Magistrate Judge Kaull's January 24, 2005, Report And Recommendation have been filed by Mr. Arbogast and that this matter is now ripe for review.

Upon consideration of Magistrate Judge Kaull's January 24, 2005, Report and Recommendation, and having received no written objections thereto¹, it is

ORDERED that the Report And Recommendation entered by United States Magistrate Judge John S. Kaull on January 24, 2005, be, and the same is hereby, **ACCEPTED** in whole and this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that, pursuant to 28 U.S.C. §§ 1915 and 1915A, the Plaintiff's Complaint be, and the same is hereby, **DISMISSED, WITH PREJUDICE**, for being frivolous, and **STRICKEN** from the docket of this Court. It is further

ORDERED that the Clerk of Court shall enter judgment for the Defendant. It is further

ORDERED that, should the Plaintiff desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and

¹The failure of a party to objection to a Report And Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4th Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

the \$250.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court of Appeals for the Fourth Circuit.

ENTER: March 1, 2006

/S/ Robert E. Maxwell
United States District Judge